

1 Amend 2 Cal. Code Regs. section 18741.1 as follows:

2 **18741.1 Permanent Ban. Participating in the Same Proceeding.**

3 (a) The prohibitions of Government Code ~~Sections~~ sections 87401 and 87402  
4 apply to any state administrative official if all of the following criteria are met:

5 (1) The official has permanently left state service or is on a leave of absence.

6 (2) The official is compensated, or is promised compensation, for making an  
7 appearance or communication, or for aiding, advising, counseling, consulting, or assisting  
8 in representing another person, other than the State of California, in a judicial, quasi-  
9 judicial or other proceeding. However, a payment made for necessary travel, meals, and  
10 accommodations received directly in connection with voluntary services are not  
11 prohibited or limited by this section.

12 (3) The official makes an appearance or communication before any officer or  
13 employee of any state administrative agency for the purpose of influencing, as defined in  
14 2 Cal. Code Regs. ~~Section~~ section 18746.2, a judicial, quasi-judicial or other proceeding,  
15 including but not limited to any proceeding described in 2 Cal. Code Regs. ~~Section~~  
16 section 18202, subdivisions (a)(1) - (a)(7).

17 (4) The judicial, quasi-judicial or other proceeding includes any proceeding in  
18 which the official participated personally and substantially by making, participating in the  
19 making, or influencing of a governmental decision, as defined in 2 Cal. Code Regs.  
20 ~~Sections~~ section 18702.1 - 18702.4, but excluding any proceeding involving the  
21 rendering of a legal advisory opinion not involving a specific party or parties. Any  
22 supervisor is deemed to have participated in any proceeding ~~which~~ that was "pending  
23 before," as defined in 2 Cal. Code Regs. ~~Section~~ section 18438.2, subdivision (b), the

1 official's agency and ~~which~~ that was under his or her supervisory authority. For purposes  
2 of this regulation, a proceeding is under a supervisor's "supervisory authority" if the  
3 supervisor:

4 (A) Has duties that include primary responsibility within the agency for directing  
5 the operation or function of the program where the proceeding is initiated or conducted;  
6 or

7 (B) Has direct supervision of the person performing the investigation, review, or  
8 other action involved in the proceeding including, but not limited to, assigning the matter  
9 for which the required conduct is taken; or

10 (C) Reviews, discusses, or authorizes any action in the proceeding; or

11 (D) Has any contact with any of the participants in the proceeding regarding the  
12 subject of the proceeding.

13 "Supervisory authority" does not include a supervisor, at a higher level within the  
14 agency's chain-of-command than the supervisor identified in subsection (a)(4)(A) above,  
15 with responsibility for the general oversight of the administrative actions or functions of a  
16 program where the responsibilities concerning the specific or final review of the  
17 proceeding are expressly delegated to other persons in the agency's structure (i.e.  
18 supervisors under subsection (a)(4)(A) above) unless the higher level supervising official  
19 has actual involvement in the proceeding as set forth in subsections (a)(4) (C) or (D) of  
20 this regulation.

21 (5) The judicial, quasi-judicial or other proceeding is the same proceeding in  
22 which the official participated.

23 Comment: Also see *In re Lucas* (2000) 14 FPPC Ops. 15.

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2 Note: Authority cited: Section 83112, Government Code.

3 Reference: Sections 87401 and 87402, Government Code.